IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Crl.Rev.Pet.No. 2220 of 2007()

CRA.102/2005 of I ADDL. SESSIONS COURT, TRIVANDRUM
CC.3147/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, TRIVANDRUM

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REVN. PETITIONER: APPELLANT/ACCUSED

M.SREEKUMAR,
TC 22/839, SREE CHITRA, ATTUKAL,
MANACAUD, THIRUVANANTHAPURAM.

BY ADV. SRI.V.N.GOPALAKRISHNAN NAIR
SRI.G.SURARSHAN

RESPONDENTS: COMPLAINANT

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1. V.R.BHASKARAN NAIR,
PULIYOOR VEEDU, ARUVIKKARA VILLAGE,
NEDUMANGAD, THIRUVANANTHAPURAM.

2. THE STATE OF KERALA, REPRESENTED
THROUGH THE GOVT. PLEADER,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR
SRI.D.SAJEEV

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2220 OF 2007 B

Dated this the 20th day of August, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.3147/2000 on the file of the J.F.C.M.-II, Thiruvananthapuram challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned counsel for the 1st respondent/complainant.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause

(b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner.

5. The cheque amount is Rs.10,00,000/- (Rupees ten lakhs only), which was borrowed in the year 2000. As against the sentence of simple imprisonment for two years and to pay the cheque amount as compensation imposed by the trial court, the lower appellate court has been indulgent enough to reduce the imprisonment to 10 months but maintaining the direction to pay compensation. The learned counsel for the revision petitioner submitted that the revision petitioner is undergoing imprisonment

since 10.10.2000 and prayed for further leniency. The learned counsel for the 1st respondent complainant submitted that apart from the present case, there are four other cases against the revision petitioner and he is undergoing sentence in all those cases. Such being the position, I am not inclined to interfere with the discretion exercised by the lower appellate court.

This revision is accordingly dismissed.

(V. RAMKUMAR, JUDGE)

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